

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 12-14, 16-17, 19, 21-22, and 30-31 are rejected under 35 U.S.C. 102(e) as being anticipated by McGinley et al. (US 2005/0149041).

Regarding claims 12-14, 16-17, 19, and 21-22, McGinley et al. disclose a device for guiding an instrument when performing an invasive procedure on an extremity of a bone comprising; a fixing block (103, figure 7) configured to be attached to the extremity of the bone in a fixing plane; a guiding block (101, figure 7) mountable on the fixing block substantially in the fixing plane, the guiding block defining the guiding path (115, figure 7) having a path axis that is substantially perpendicular to the fixing plane (figure 7); and a first manipulator (107/108, figure 7) operatively connected to the fixing block and the guiding block for pivoting the guiding block with respect to the fixing block about an axis substantially perpendicular to the fixing plane (§¶67-68), wherein the first manipulator is manipulable from a position at or near to a transverse end of the device

(figure 7, ¶¶67-68), wherein the guiding path (115, figure 7) is a substantially planar path (figure 7), and further comprising a second manipulator (110/111, figure 7) operatively connected to the fixing block (103) and the guiding block (101) for translating the guiding block with respect to the fixing block along an axis substantially in the fixing plane (¶¶67-68), and wherein the second manipulator is manipulable from a position at or near to a transverse end of the device (figure 7, ¶¶67-68), and the fixing block (103, figure 7) has a recess (105, figure 7) formed therein, and further comprising a mount element (¶¶67) located in the recess, the mount element being pivotable within the recess and operatively connected to the first manipulator (the screw is pivotable), and the first manipulator comprises an exterior actuator (107, figure 7), a stem (106, figure 7) connected to the exterior, the stem having an end portion that drives the mount element (¶¶68), wherein the first manipulator translates rotational manipulation of the exterior actuator into rotational motion of the rotational mount element (¶¶68, figure 7)

Regarding claims 30-31, McGinley et al. disclose a device for guiding an instrument when performing an invasive procedure on an extremity of a bone, comprising a fixing block (103, figure 7) configured to be attached to the extremity of the bone in a fixing plane; a guiding block (101, figure 7) mountable on the fixing block substantially in the fixing plane, the guiding block defining a guiding path (115, figure 7) having a path axis that is substantially perpendicular to the fixing plane; and a first manipulator (107/108, figure 7) operatively connected to the fixing block and the guiding block for pivoting the guiding block with respect to the fixing block about an axis

substantially perpendicular to the fixing plane (¶67-68), wherein the fixing block has a recess (105, figure 7), and further comprising a mounting element at least partially disposed within the recess (¶67), the mounting element having an aperture (screw head recess) , a second manipulator (109, figure 7) operatively connected to the fixing block and the guiding block for translating the guiding block with respect to the fixing block in an axis substantially parallel to the fixing plane (¶68), the second manipulator comprising a stem (104, figure 7) at least partially disposed within the aperture of the mounting element, the mounting element being pivotable about a pivot axis (screws are capable of being pivoted) and being operatively connected to the first manipulator.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11, 23-24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinley et al. (US 2005/0149041).

McGinley et al. disclose an apparatus for guiding a cutting tool in a surgical procedure on a bone comprising a fixation block (103, figure 7) configured to be attached to a bone in a fixing plane (figure 7), a guide block (101, figure 7) attached to the fixation block, the guide block defining a path (115, figure 7) for a cutting tool, the path having a path axis that is substantially perpendicular to the fixing plane (figure 7);

wherein the guide block is translatable relative to the fixation block along a translation axis substantially parallel to the fixing plane (¶67-68), and pivotable relative to the fixation block about a pivot axis that is substantially parallel to the path axis (¶67-68), wherein the fixation block has a recess former therein (figure 7) and wherein the translation axis and the pivot axis intersect (figure 7), and further comprising a shaft (104, figure 7) that extends between the fixation block and the guide block, wherein the shaft is threaded along at least a portion of its length remote from the end where the connector pin engages the fixation block (screw 104, figure 7), and wherein the guide block is translatable from a first position to a second position along the translation axis by rotating the shaft (¶67-68). The apparatus further comprises a first adjuster (107, figure 7) for pivoting the guide block relative to the fixation block and a second adjuster (110/111, figure 7) for translating the fixation block relative to the guide block, and the first and second adjusters are located at or toward one end of the fixation block (figure 7) and the path is defined by a slot (115, figure 7) formed in the guide block, the slot being configured to receive the blade of a saw (¶67).

McGinley et al. fail to disclose within a single species the pivotable connection between the guide block and the fixation block being a worm drive assembly having a mount element located within the recess and an orientation adjuster operatively connected to the work gear assembly to pivot the guide block relative to the fixation block about the pivot axis, and the end portion is threaded and the mount element has an exterior surface with engages an array of teeth that engage the threaded end portion, wherein the array of teeth are concave parallel teeth.

McGinley does disclose within another embodiment that the pivotable connection mechanism between the guide block and the fixation block may be a worm drive assembly (§84) to pivot the guide block relative to the fixation block about the pivot axis. It would be obvious to construct a work gear assembly having an array of teeth and a threaded end portion, the threads would have a convex shape which would mate with a matching concave surface of the teeth to drive the assembly (§84).

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGinley et al. (US 2005/0149041).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the apparatus of McGinley having a first guiding block with an anterior guiding path and a second guiding block with a posterior guiding path, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGinley et al. (US 2005/0149041).

McGinley et al. disclose the claimed invention except for the first and second guiding block having opposite handedness. It would have been an obvious matter of design choice to have the first and second guiding block having opposite handedness, since applicant has not disclosed that having opposite handedness solves any stated

problem or is for any particular purpose and it appears that the invention would perform equally well with the first and second guiding blocks have same handedness.

Response to Arguments

6. Applicant's arguments with respect to all pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. L./
Examiner, Art Unit 3775

/Thomas C. Barrett/
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